

# STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

FOP/166931

# PRELIMINARY RECITALS

Pursuant to a petition filed June 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 16, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,982 for the period of October 1, 2014 – April 30, 2015 from the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST: Petitioner:



# Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, Wisconsin 53703 By: Tyjene Taylor

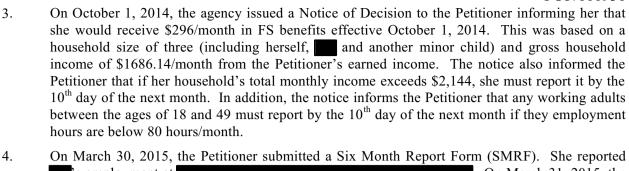
Milwaukee Enrollment Services 1220 W Vliet St, Room 106 Milwaukee, WI 53205

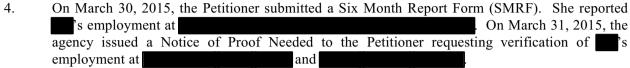
ADMINISTRATIVE LAW JUDGE:

Debra Bursinger Division of Hearings and Appeals

## **FINDINGS OF FACT**

- 1. Petitioner (CARES # ) is a resident of Milwaukee County.
- 2. On September 22, 2014, the agency processed Petitioner's online renewal. She reported that her 18 year old son had graduated from high school on June 30, 2014 and had no earned income.





5.	On April 5, 2015, the agency received an employer verification for from
	Inc. reporting that s last date of employment was November 19, 2014 and his final
	paycheck was November 27, 2014.

6. On April 23, 2015, the agency issued a Notice of Decision to the Petitioner informing her that FS benefits would be terminated effective May 1, 2015 due to household income exceeding the program limit.

7.	On May 15, 2015, the agency re	quested rs employment and income	e verification from
	and	<u> </u>	

8. On May 27, 2015, the agency received a completed Historical Earnings Verification Request from reporting his date of hire as September 29, 2014 and the date of his first paycheck as October 10, 2014. It further reported his end date of November 19, 2014 and final paycheck was December 5, 2014. In addition, it verified saturations income as follows:

October, 2014	\$ 758.10
November, 2014	\$ 985.15
December, 2014	\$ 98.80

9. The agency received information from the Work Number regarding seems semployment and income at seasons. It reported a start date of December 3, 2014 and income as follows:

December, 2014	\$	424.59
January, 2015	\$1	,128.39
February, 2015	\$	807.08
March, 2015	\$	890.56
April, 2015	\$	911.83
May, 2015	\$	406.14

- The agency also received information from the Work Number that was employed at with a start date of February 17, 2013. No end date of employment was provided but no income beyond October, 2014 was reported. For October, 2014, gross income of \$169.58 was reported. For September, 2014, had gross income of \$706.26.
- 11. On June 26, 2015, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of

\$1,982 for the period of October 1, 2014 – April 30, 2015 due to failure of the Petitioner to report earned income of

12. On June 29, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "nonclient error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook (FSH), § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency asserts that the Petitioner failed to report searned income when she completed a renewal in September, 2014. The agency produced employer verifications and actual wage information to demonstrate that was employed with several employers during the relevant time period. The agency also produced the Petitioner's renewal information demonstrating that the Petitioner did not report semployment status.

The Petitioner testified that she was told that she was not required to report semployment while he was in school. was employed with while he was still in school. However, graduated on or about June 30, 2014. Therefore, the Petitioner was required to report his employment at the time of the renewal in September, 2014. Further, sadditional employment was not reported to the agency until March, 2015. In addition, Petitioner's household income exceeded the reporting requirement and Petitioner failed to report this to the agency.

I reviewed the worksheets from the agency establishing the amount of the overpayment. Based on the employment and income verifications, I conclude the agency properly determined the amount of the overpayment as \$1,982 for the period of October 1, 2014 – April 30, 2015.

# **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,982 for the period of October 1, 2014 – April 30, 2015 due to a client error in failing to accurately report household income.

#### THEREFORE, it is

#### **ORDERED**

That the Petitioner's appeal is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received** within 20 days after the date of this decision. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 25th day of August, 2015

\sDebra Bursinger Administrative Law Judge Division of Hearings and Appeals



# State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on August 25, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability